UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, and STATE OF NEW YORK, *Plaintiffs,* v. TWIN AMERICA, LLC, et al. *Defendants.*	Civil Action No. 12-cv-8989 (ALC) (GWG) ECF Case

JOINT PRELIMINARY TRIAL REPORT

Pursuant to section IV(A) of the Standing Order for the Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York ("Pilot Project Standing Order") and the Fourth Amended Scheduling Order dated April 10, 2014 (Dkt. No. 53), all Parties in the above-referenced action submit this Joint Preliminary Trial Report.

DEFINITIONS

Throughout this Joint Preliminary Trial Report, the following terms will be used:

(a) "Action" means the above-captioned action pending in this Court.

(b) "Party" means any Plaintiff or any Defendant in this Action.

(c) "Parties" means collectively the Plaintiffs and Defendants in this Action.

(d) "Transaction" means the joint venture agreement executed on March 17, 2009 between International Bus Services, Inc. and City Sights Twin, LLC that established Twin America, LLC.

1. THE FULL CAPTION OF THIS ACTION

UNITED STATES OF AMERICA, and STATE OF NEW YORK, *Plaintiffs,* v. TWIN AMERICA, LLC, COACH USA, INC., INTERNATIONAL BUS SERVICES, INC., CITYSIGHTS LLC, and CITY SIGHTS TWIN, LLC, *Defendants.*	Civil Action No. 12-cv-8989 (ALC) (GWG) ECF Case

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3. SUBJECT MATTER JURISDICTION

This Court has subject matter jurisdiction over this Action pursuant to 15 U.S.C. § 4, 15 U.S.C. §§ 25 and 26, and 28 U.S.C. §§ 1331, 1337, and 1345. The Court has supplemental jurisdiction over the Action and Parties as to the State of New York's claims under the Donnelly Act and the New York Executive Law under 28 U.S.C. § 1367.

No Party disputes this Court's subject matter jurisdiction over this Action.

4. CLAIMS AND DEFENSES

The four causes of action that Plaintiffs assert in their Complaint remain to be tried. Plaintiffs claim that the formation and continuing operation of Twin America, LLC ("Twin America"), a joint venture formed in 2009 that combined the hop-on, hop-off bus tour assets and operations of Coach and CitySights, did and will likely continue to substantially lessen competition in the market for hop-on, hop-off bus tours in New York City, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Plaintiffs further claim that Coach's and CitySights's agreement to combine their hop-on, hop-off bus tour assets and operations through the Transaction, to eliminate competition between them, and to not compete against each other or against Twin America unreasonably restrains trade, and will likely continue to unreasonably restrain trade, in the market for hop-on, hop-off bus tours in New York City, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 and Section 340 of the Donnelly Act, N.Y. Gen. Bus. Law § 340. Plaintiff State of New York also alleges that by forming and operating the Twin America joint venture in violation of Section 1 of the Sherman Act, Section 7 of the Clayton Act, and Section 340 of the Donnelly Act, the Defendants have engaged in repeated illegal acts or otherwise demonstrated persistent illegality in the carrying on, conducting, or

transaction of business, in violation of Section 63(12) of the New York Executive Law, N.Y. Exec. Law § 63(12). The remedies sought by Plaintiffs include injunctive relief to restore competition to the market, and disgorgement of Defendants' ill-gotten gains.

Defendants deny that their now five-year old merger from 2009 violated Section 7 of the Clayton Act, 15 U.S.C. § 18, Section 1 of the Sherman Act, 15 U.S.C. § 1, Section 340 of the Donnelly Act, N.Y. Gen. Bus. Law § 340, and Section 63(12) of the New York Executive Law, N.Y. Exec. Law § 63(12). As a threshold matter, Defendants dispute the alleged antitrust market for "hop-on/hop-off bus tours in New York City" as artificially narrow. Defendants contend that their hop-on/hop-off bus tours compete against a wide array of tours and attractions in New York City as a matter of fact and common sense. Defendants also dispute that the merger of Gray Line and CitySights tours created a firm with "market power"—the ability to control price and exclude competition and the requisite crux of the Government claims. Defendants also contend that the Government cannot meet its burden to prove that there are "barriers" to entering the alleged antitrust market. The Government's alleged antitrust market now contains four competitors in addition to Twin, including two of the world's largest hop-on/hop-off bus tour operators. Defendants contend this entry into the alleged market is both a complete defense to liability in the case, as well as a complete defense to the injunctive relief the Government has requested.

Defendants asserted fifteen defenses in their Answers filed on February 11, 2013 (*See* Dkt. Nos. 17 & 18), fourteen of which remained to be tried. Specifically, Defendants continue to assert the following defenses:

FIRST DEFENSE: The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE: The claims set forth in the Complaint are barred by the State Action Doctrine.

THIRD DEFENSE: Plaintiffs are not entitled to equitable monetary relief.

FOURTH DEFENSE: Plaintiffs' claims should be dismissed to the extent they are moot.

FIFTH DEFENSE: The purported relevant market alleged in the Complaint is not a relevant antitrust market, and Plaintiffs cannot carry their burden of defining a proper relevant market.

SIXTH DEFENSE: Twin America does not have market power or monopoly power in any properly defined relevant market, and Plaintiffs therefore cannot state a claim sounding in antitrust.

SEVENTH DEFENSE: Twin America would not have market power even if the relevant market were as alleged in the Complaint because of the lack of significant barriers to entry.

EIGHTH DEFENSE: Any conduct engaged in by Twin America was not anticompetitive and cannot support a claim sounding in antitrust.

NINTH DEFENSE: Plaintiffs' claims are barred, in whole or in part, because Twin America did not engage in any illegal activity.

TENTH DEFENSE: Plaintiffs' claims are barred, in whole or in part, because Twin America did not engage in supracompetitive pricing.

ELEVENTH DEFENSE: Plaintiffs' claims are barred, in whole or in part, because the alleged conduct that is the subject of the Complaint did not lessen competition in a relevant market or markets.

TWELFTH DEFENSE: Plaintiffs' claims are barred by the doctrine of laches and/or any applicable statutes of limitation.

THIRTEENTH DEFENSE: Plaintiffs are not entitled to receive reasonable attorneys' fees.

FIFTEENTH DEFENSE: Defendants reserve the right to assert other defenses as this action proceeds up to and including the time of trial.

Defendants also asserted the following defense to Plaintiffs' Complaint, which is no longer applicable:

FOURTEENTH DEFENSE: Defendants adopt by reference any applicable defense pleaded by any other defendant not otherwise expressly set forth herein.

5. GOVERNING LAW AND CHOICE OF LAW

The Parties agree that Section 1 of the Sherman Act, Section 7 of the Clayton Act, Section 340 of the Donnelly Act, and Section 63(12) of the New York Executive Law govern each claim and defense in this Action. No Party disputes the choice of law.

6. ESTIMATED LENGTH OF TRIAL

The Parties expect that the trial of this Action will last approximately two weeks (10 trial days). The case is to be tried without a jury.

7. TRIAL BY MAGISTRATE JUDGE

The Parties do not consent to trial before a Magistrate Judge.

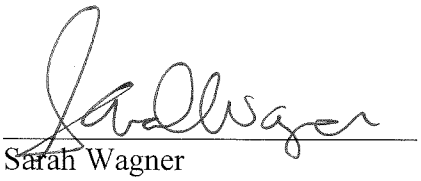
8. SUMMARY JUDGMENT MOTIONS

Plaintiffs do not intend to file any summary judgment motion.

Defendants intend to move for summary judgment on two grounds. First, the undisputed facts establish that four competitors have entered the alleged antitrust market since the formation of the joint venture for hop-on/hop-off bus tours in New York City. Thus, the Government cannot meet its burden to prove barriers to entering the alleged market. Second, Plaintiffs are not entitled to the relief of disgorgement as a matter of fact or law. No expert testimony is necessary for Defendants' to win these motions.

AGREED TO:

Dated: May 30, 2014

By: 

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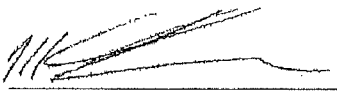
By: 

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